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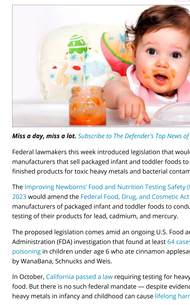
'We Have Been Here Before': Proposed Bill Would Require Manufacturers to Test Baby Foods for Heavy Metals

Food safety experts called the proposed legislation a step in the right direction, but some said it's too little, too late, and doesn't go far enough to protect children.

By Suzanne Burdick, Ph.D.



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Federal lawmakers this week introduced legislation that would require food manufacturers that sell packaged infant and toddler foods to routinely test their finished products for toxic heavy metals and bacterial contamination.

The Improving Newborns' Food and Nutrition Testing Safety (INFANTS) Act of 2023 would amend the Federal Food, Drug, and Cosmetic Act by requiring manufacturers of packaged infant and toddler foods to conduct quarterly testing of their products for lead, cadmium, and mercury.

The proposed legislation comes amid an ongoing U.S. Food and Drug Administration (FDA) investigation that found at least 64 cases of potential lead poisoning in children under age 6 who ate cinnamon applesauce pouches sold by WanaBana, Schnucks and Weis.

In October, California passed a law requiring testing for heavy metals in baby food. But there is no such federal mandate — despite evidence that exposure to heavy metals in infancy and childhood can cause lifelong harm.

The proposed federal bill — introduced on Dec. 18 by Reps. Emilia Sykes (D-Ohio), Frank Pallone (D-N.J.), Raja Krishnamoorthi (D-Ill.) and Tony Cárdenas (D-Calif.) — requires food manufacturers to maintain a record of all sampling results and share those records with the FDA.

It also requires infant formula manufacturers to routinely monitor and sample their products for Cronobacter, a harmful bacteria. Last year at least two babies died and three became ill after consuming formula tainted with Cronobacter.

Sykes said in a press release that the bill required "commonsense nutrition testing" for infant and toddler foods:

> "Parents have enough on their plates — they shouldn't have to worry if the food they are feeding their infants and toddlers contains dangerous amounts of toxic heavy metals like lead or arsenic. …
>
> "The INFANTS Act will provide parents with much-needed peace of mind and ensure infants and toddlers have the safe, nutritious food they need to grow and develop."

A spokesperson from Sykes's office told The Defender the bill is meant to be complementary legislation for the Baby Food Safety Act which "would establish maximum levels of certain toxic elements allowed in infant and toddler food."

The spokesperson pointed out that the Baby Food Safety Act's authors — Reps. Cárdenas and Krishnamoorthi — are also co-sponsors of the INFANTS Act.

The Baby Food Safety Act was introduced on March 26, 2021, and referred to the U.S. House of Representatives' health subcommittee on March 29, 2021. It is unclear if and when it may go to the floor for a vote.

Attorney Pedram Esfandiary was skeptical that Congress would swiftly act to set limits for heavy metals in baby and toddler foods. He told The Defender:

> "We have been here before. When the original Baby Food Safety Act was promulgated back in 2021, it went nowhere, despite making loud promises to parents that finally baby food makers would be held to a standard that was safer for their children.
>
> "As much as we'd like to believe that this time, changes will be enacted, it shouldn't have taken more than 200 kids to suffer lead poisoning before someone noticed that the Baby Food Safety Act was gathering dust in a forgotten subcommittee."

Esfandiary is the lead attorney at Wisner Baum working on the law firm's toxic baby food litigation. Thousands of families have retained Wisner Baum, claiming their children developed autism spectrum disorder and/or attention-deficit/hyperactivity disorder (ADHD) after being exposed to dangerously high levels of heavy metals in baby food products.

The firm's litigation on their behalf alleges seven baby food companies knowingly sold — and continue to sell — products tainted with heavy metals that can cause brain damage that manifests as diagnoses of autism and ADHD.

The companies charged in the litigation are Beech-Nut, Gerber, Hain Celestial Group — Earth's Best Organic, Nurture — Happy Family Organics and Happy BABY, Plum Organics, Sprout Foods — Sprout Organic Food, and Walmart — Parent's Choice.

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'Without routine sampling, consumers will have little confidence in the safety of baby food'

The Environmental Working Group (EWG) in a statement applauded the bill's introduction as a step in the right direction, given the FDA's failure to quickly enact limits on heavy metals in foods.

Scott Faber, EWG's senior vice president of government affairs, said, "Babies and toddlers should be safe from toxic metals and pathogens … Without routine sampling, consumers will have little confidence in the safety of baby food."

Cárdenas agreed. He said assessing the safety of baby and toddler food is of "paramount importance" for "ensuring the health of our nation's children."

Cárdenas added:

> "The INFANTS Act will demand more accountability from food manufacturers as they test their final products [and] improve the U.S. Food and Drug Administration's (FDA) ability to conduct oversight."

Under the INFANTS Act, food manufacturers would have to test packaged samples of their products for "levels of lead, cadmium, mercury, arsenic, and any other contaminant, including other toxic elements, that the Secretary may specify by regulation."

Foods made by manufacturers that fail to follow the bill's testing requirements would be considered "adulterated" under the Federal Food, Drug, and Cosmetic Act.

The bill also would require infant formula manufacturers to establish and implement an environmental monitoring program to be sure they have sanitation and hygiene controls in place to prevent contamination by Cronobacter or Salmonella.

Additionally, infant formula manufacturers must notify the FDA within 24 hours if they become aware that their product is contaminated.

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FDA's proposed limits not low enough

The FDA — despite its current investigation and a 2021 congressional investigation that found major commercial baby food brands to be contaminated with significant levels of arsenic, lead, cadmium and mercury — still has not set limits for lead in baby foods.

The agency proposed limits in January, but those won't be finalized until 2025.

Some experts — including Brian Ronholm, director of Food Policy for the nonprofit Consumer Reports — said the FDA's proposed limits reflect what the agency thinks the industry can achieve, not what would most protect children's health.

FDA's drafted guidance would limit the concentration of lead in fruit, yogurt and certain vegetable products to 10 parts per billion. For dry cereals and single-ingredient root vegetable products, like mashed potatoes, the limit would be 20 parts per billion.

One of the recalled applesauce pouches tested by the FDA had lead levels of 2.18 parts per million, more than 200 times the proposed levels.

Ronholm on Dec. 13 told NBC, "In my opinion, they're not low enough."

While acknowledging there is no safe level for lead in food, Ronholm said the limit should be closer to 3 parts per billion.

Children under the age of 6 are most vulnerable to lead poisoning and there is no safe level of lead for children, according to the Centers for Disease Control and Prevention (CDC).

Lead exposure can lead to brain damage, developmental delays and problems with a child's hearing, speech, learning and behavior, the CDC said.

Research published recently also showed lead exposure in kids under 5 is linked to IQ loss and heart disease deaths.

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Suzanne Burdick, Ph.D., is a reporter and researcher for The Defender based in Fairfield, Iowa.

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